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NO. 89-179

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

TOWN OF BEECH MOUNTAIN, N.C., et al.,
Petitioners,

v.

COUNTY OF WATAUGA, N.C., et al.,
Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court of North Carolina

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	ii
Reasons For Denying The Writ.....	1
I. The Questions Presented By The Petition Have Been Settled By This Court.....	2
II. The State Court Decided The Questions Of Federal Law In Accordance With The Applicable Decisions Of This Court.....	6
Conclusion.....	7



TABLE OF AUTHORITIES

	<u>Page</u>
<u>Allegheny Pittsburgh Coal Co. v.</u> <u>County Commissioner of Webster</u> <u>County</u> , 109 S.Ct. 633 (1989).....	7
<u>Brown-Forman Co. v. Kentucky</u> , 217 U.S. 563 (1910).....	7
<u>Dunn v. Blumstein</u> , 405 U.S. 330 (1972).....	4
<u>McGowan v. Maryland</u> , 366 U.S. 420 (1961).....	2, 5
<u>Memorial Hospital v. Maricopa County</u> , 415 U.S. 250 (1974).....	4
<u>San Antonio School District v.</u> <u>Rodriguez</u> , 411 U.S. 1 (1973).....	3
<u>Shapiro v. Thompson</u> , 394 U.S. 618 (1969).....	4
<u>Toomer v. Witsell</u> , 334 U.S. 385 (1948).....	5



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REASONS FOR DENYING THE WRIT

"A review on writ of certiorari is not
a matter of right, but of judicial discre-
tion, and will be granted only when there



are special and important reasons therefor." Sup.Ct.R. 17.1. There are not reasons for the exercise of the Court's discretionary jurisdiction in the instant case.

I. THE QUESTIONS PRESENTED BY THE PETITION HAVE BEEN SETTLED BY THIS COURT.

Petitioners' equal protection argument is without merit as "[s]tate legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality." McGowan v. Maryland, 366 U.S. 420, 425-26 (1961). To overcome this legal presumption, Petitioners must show that the challenged action either places them at a disadvantage because of their membership in a suspect class or that it unreasonably interferes with their exercise of a



fundamental right. They have not presented allegations in the Amended Complaint (Petition at A-1 through A-28) which can support either legal theory.

A suspect class is one which has been "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." San Antonio School District v. Rodriguez, 411 U.S. 1, 28 (1973). "For obvious reasons," the State Court "decline[d] to recognize nonresident individuals owning second homes in North Carolina resort areas as a down-trodden minority." Petition at A-54.

The State Court correctly held that "[o]nly those statutory classifications



which so burden the right to travel that they function, in effect, as penalties upon those migrating to a new state," Petition at A-56 (emphasis in original), would support Petitioners' position. See generally Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969). The State Court found no such penalty to have been alleged.

Nothing in the record indicates that Beech Mountain's nonresident property owners pay higher taxes, received fewer services, or are otherwise treated differently from its resident property owners. Therefore, the statute cannot be said to inhibit free interstate migration or to significantly burden the right to travel.

Petition at A-57.

Therefore, as the State Court noted a reasonable basis for the challenged



legislation (Petition at A-59), which is addressed to "a legitimate governmental objective" (id.), the "presumption of constitutionality" (Petition at A-60), recognized by this Court in McGowan, supra, resolves the equal protection issue in favor of Respondents.

Petitioners also argue that the challenged legislation violates their privileges and immunities as citizens of the United States. This theory for relief is equally devoid of merit. The State Court noted that "[t]he privileges and immunities clause 'was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy.' Toomer v. Witsell, 334 U.S. 385, 395 . . . (1948)." Petition at A-60.



In this case, the State Court offered the following analysis of Petitioners' claim of interference with rights of federal citizenship.

. . . Beech Mountain property owners who maintain their primary residence elsewhere are treated no differently from property owners who reside in Beech Mountain year-round. The statute contains no impermissible distinction based upon state citizenship. The privileges and immunities clause is simply not implicated in this case.

Petition at A-60. The correctness of this holding is apparent.

II. THE STATE COURT DECIDED THE QUESTIONS OF FEDERAL LAW IN ACCORDANCE WITH THE APPLICABLE DECISIONS OF THIS COURT.

The State Court decision which Petitioners seek to have this Court review is based upon this Court's decisions previously cited. There is no inconsistency



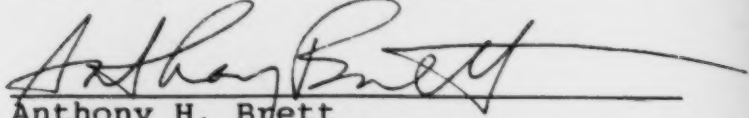
between the State Court's legal analysis of the issues and the governing authority provided by this Court including the recent opinion in Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, 109 S.Ct. 633, 638 (1989) ("In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573 (1910)").

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Writ of Certiorari should be denied.



This 11th day of October, 1989.

A handwritten signature in dark ink, appearing to read "Anthony H. Brett", is written over a horizontal line.

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